

PART XVI.

RULES REGARDING THE REMUNERATION AND DUTIES OF THE LAW OFFICERS OF GOVERNMENT ISSUED IN SUPERSESSION OF ALL EXISTING RULES AND ORDERS ON THE SAME SUBJECT.*

July 1893.

The following Rules for the conduct of the legal affairs of Government include the Rules published with Notification No. 5756, *Bombay Government Gazette*, 1882, Part I, pages 740 to 746, in cancellation of those published with Notification No. 6452B of 9th November 1878, and also include all amendments thereof, up to date, as prescribed by the Governor in Council for observance, the Notifications with which the various amendments were published being specified in the margins of the Rules amended:—

I.—The Advocate General.

1. The salary of the Advocate General is Rs. 2,000 per month in addition to an office allowance of Rs. 200 per month.
 2. The Advocate General is the chief legal adviser of Government. He is bound to give his opinion in any matter upon which the Government may think fit to consult him, (a) including projects of legislation. He is not responsible for the correct preparation of the drafts of Bills, but when called on to advise upon Bills which are under the consideration of Government, it is his duty to indicate any defects he may detect in the drafting thereof and to suggest such modifications as he may deem necessary therein, as well as to advise generally upon the proposed measures. (a)†
 3. The Commander-in-Chief, the Judge Advocate General of the Army, and, subject to the provisions of Rule 16, all Heads of Departments at the Presidency,
- And as adviser of the chief officers of Government.

* The rules under this part are extended to Sind in a form adapted to that Province from 1st January 1883—*vide* Government Notification No. 6849, dated 2nd November 1882, Judicial Department, *B. G. G.*, 1882, Pt. I., pp. 946 to 961. The modifications are indicated in the foot-notes.

Notifications modifying the rules for Sind.

No.	B. G. G. years.	Pages.	No. of rules modified.
436	1883	75 to 77	37 to 55
2180	1883	271	48
796	1884	73	40 and 42
7476	1885	1262	43 and 53
1391	1886	217	31
2115	1887	294 and 295	49
2976	1887	452	43
4227	1888	658	48
1572	1890	254	49
5936	1890	1092	49
6806	1891	1039	30
5949	1892	1071	45
1950	1893	312	45

† The words from (a) to (a) shown in Rule 2 are to come into force on the next occurrence of a vacancy in the office of Advocate General, *vide* Notification No. 3236, *B. G. G.*, 1892, Pt. I., page 542.

whether such Departments are under the Supreme or Local Government, have also the right to require the Advocate General's opinion in any matter they may think it necessary to refer to him.

4. It is the duty of the Advocate General to advise May be consulted by (a)* the Solicitor to Government, as Public Prosecutor, (a) the Legal Remembrancer, and the Legal Remembrancer, whenever (a)* either of those officers (a) deems it necessary, in any case or matter affecting the interests of Government to consult him.

5. It is the duty of the Advocate General to Duties as Advocate. undertake any legal business within the range of an advocate's functions which Government may desire him to undertake in Bombay, and to represent Government in all actions and civil proceedings on the Original Side of the High Court.

6. It is the duty of the Advocate General—

(a) to appear on the Original Side of the High

May be required to appear on behalf of Government officers and others on the Original Side of the High Court ; Court in every suit or other civil matter in which Government require his services, who-ever the nominal party on whose behalf he is called on to appear may be (but he will not appear, without the requisition of Government, for any person except the Secretary of State for India in Council) ;

(b) to appear, if required by Government, on and in cases transferred for trial to the High Court. their behalf in any original case, civil or criminal, which the High Court transfers from any other Court in the Presidency for trial before itself ;

(c) to appear on behalf of Government in all appeals to the High Court from decisions of the Presidency Magistrates, when required to do so by Government, on the motion of the Solicitor to Government as Public Prosecutor ;

†(d) to appear on behalf of Government in any case, civil or criminal, which comes before the High Court with reference to any decision, order or proceeding of a Court situated without the City of Bombay, when required to do so by Government, on the motion of the Legal Remembrancer or otherwise :

Provided that for every case in which he is called upon to appear under clause (d), the Advocate General shall be entitled to a fee as counsel of such amount as shall from time to time be fixed by Government.

* The words from (a) to (a) shown in Rule 4 are to come into force on the next occurrence of a vacancy in the office of Advocate General, *vide* Notification No. 3236, B. G. G., 1892, Pt. I., page 542.

† To come into force on the next occurrence of a vacancy in the office of Advocate General, *vide* Notification No. 3236, B. G. G., 1892, Pt. I., page 542.

7. In any case in which it is proposed to require the services of the Advocate General on behalf of some third person not directly identified in interest with Government, Government will determine whether the case is one in which they have such an interest as to render it advisable that it should be conducted on their behalf, and when it has been so determined, it is the duty of the Advocate General to afford his services, as he would if Government were directly a party to the case.

Requisition for his services in cases to which Government is not a party to be made by Government.

whether the case is one in which they have such an interest as to render it advisable that it should be conducted on their behalf, and when it has been so determined, it is the duty of the Advocate General to afford his services, as he would if Government were directly a party to the case.

8. It is the duty of the Advocate General to prosecute as leading Counsel in all original criminal cases tried before the High Court in which Government direct that their Law officers shall prosecute.

Prosecutes in criminal cases before the High Court when required by Government.

9. In ordinary original criminal cases tried before the High Court the Advocate General will exercise his discretion and prosecute as leading Counsel whenever he deems it desirable, in the interests of the public, that he should do so.

10. The Advocate General has also to discharge, as occasion arises, the various Statutory duties. duties imposed upon him by specific enactments of the English and Indian Legislatures.

II.—The Solicitor to Government.

11. The salary of the Solicitor to Government is Salary. Rs. 2,000 per month.

12. The Solicitor to Government is bound to discharge all the ordinary Ordinary duties. duties of an Attorney and Solicitor to Government and to those officers of Government who are entitled to consult the Advocate General.

13. It is his duty to conduct all such conveyancing business and to draft all Conveyancing and such instruments and other drafting to be done by him. legal documents as the Supreme or Local Government, or any authorized Government officer, may require.

14. The Legal Remembrancer is entitled to the assistance of the Solicitor to Government in all matters in which the special knowledge of a solicitor may be of advantage.

Legal Remembrancer entitled to his assistance.

15. It is the duty of the Solicitor to Government to retain counsel in criminal cases which are prosecuted by the Law Officers of Government, obtaining copies of the documents from the Public Prosecutor, and also to instruct Government Counsel generally in all cases except those in which the performance of this duty is otherwise provided for, or in which Government

Counsel to be retained and instructed by him.

or the officers entitled to consult the Advocate General instruct him direct; and his duties are in every respect co-extensive with those of the Advocate General, so far as the business of an attorney and solicitor is concerned.

16. Save in cases of emergency, references for

References for legal opinion or advice how to be made. the opinion or advice of the Advocate General must be made through the Solicitor to Government. Similiar refer-

ences may be made by Government and the officers entitled to consult the Advocate General for the opinion or advice of the Solicitor to Government himself; and in every case it is the duty of the officer making the reference to state whether the opinion or advice of the Advocate General, or of the Solicitor to Government, is required; but in any case in which his own opinion may be asked, and which, on perusal, he may consider to be of special difficulty or importance, the Solicitor to Government should obtain and forward the opinion of the Advocate General.

17. The officers of Government requiring legal

Procedure in case of such references. advice from either the Advocate General or the Solicitor to Government are respons-

sible for placing before the Solicitor to Government all, and not more than all, the documents necessary for the proper consideration of the point on which an opinion or advice is required, and also for stating, as precisely as possible, the point on which the advice or opinion is required; but if the Solicitor to Government, in any case submitted either for his own advice or opinion, or for that of the Advocate General, finds that the real point has been missed or incorrectly stated, or that the facts stated do not afford sufficient material for forming an opinion, it is his duty to return the case for re-submission in proper form, at the same time pointing out in what respect the reference is deficient.

18. The Solicitor to Government is also *ex-officio**

Solicitor to Government is Public Prosecutor for Bombay and in that capacity receives a salary of Rs. 500 per month, in addition to his salary as Solicitor.

Duties as Public Prosecutor. 19. The duties of the Public Prosecutor for Bombay are—

(1) to prepare and watch prosecutions in trials before the High Court, to draw the briefs, and to take care that the necessary witnesses are in attendance;

(2) to communicate with, and advise Magistrates, whether in Bombay or in the mofussil, in respect to cases committed, or to be committed, for trial in the High Court;

* In the Sind Rules No. 18 runs: "The Solicitor to Government is appointed under section 492 of the Criminal Procedure Code *ex-officio* Public Prosecutor," &c.

may be referred to him by Government. This duty extends to Government business of all kinds, and in all departments, whether under the Supreme or Local Government.

28. Rule 17, which applies to references for the advice or opinion of the Solicitor to Government, or of the Advocate General, is to be held

Procedure in respect of reference to him for opinion or advice. applicable, as far as may be, to all such references to the Remembrancer of Legal Affairs; but the Remembrancer of Legal Affairs will, in this as in all other branches of his duties, himself ordinarily perform all the usual work of a solicitor.

29. Heads of Departments in the Mofussil may make direct references to the Remembrancer of Legal Affairs for advice or opinion only in respect of suits or other civil proceedings which are actually

pending, and in which Government is concerned or interested, and of criminal proceedings which are actually pending. References on general questions, or in regard to proceedings other than the above, should be submitted to Government, who will call for the Remembrancer of Legal Affairs' report, or not, as they deem fit. *In the case of reference to the High Court under the Stamp Act, the Remembrancer of Legal Affairs will ordinarily decide whether or not the Government Pleader in the High Court need appear on behalf of Government. Whenever he has any doubt, he should take the special orders of Government.

30. Municipalities and Local Boards must, as a general rule, be left to defend the legality of their own proceedings, and are not entitled to the advice of the Government

(Notn. No. 6806, B.G.G., 1891, Pt. I., p. 1039.)

Municipalities and Local Boards not ordinarily entitled to his advice. Law Officers. But in cases of special importance, or difficulty, a reference may be made to Government to obtain the opinion or advice of the Remembrancer of Legal Affairs for the guidance of Municipalities or Local Boards in their proceedings, or in the defence of actions which have been brought against them, or with which they are threatened.

31 (1). † It is also the duty of the Remembrancer of Legal Affairs to advise Go-

(Notn. No. 20, B.G.G., 1886, Pt. I., p. 48.)

Duties in respect of appeals against acquittals in criminal cases and of applications to High Court to exercise powers of revision. government regarding proposals to appeal, under section 417 of the Criminal Procedure Code, against the acquittal of accused persons and regarding proposals

* In the Sind Rules the last two sentences of Rule 29 are omitted.

† In No. 31 of the Sind Rules the words "Sadar Court" are substituted throughout for "High Court."

In clause 4 of the same rule for the words "the Government Pleader in the High Court," the Sind Rules, substitute the words "the Public Prosecutor for Sind."

In clause 5 for "Government Pleader," the Sind Rules, substitute "the Public Prosecutor for Sind" and omit the words "authorise him to."

In clauses 6 and 8 for "Government Pleader," the Sind Rules, substitute "Public Prosecutor."

In clause 7 for "Government Pleader," the Sind Rules, substitute "Public Prosecutor for Sind".

to apply to the High Court to exercise powers of revision in criminal matters which District Magistrates are not authorized to refer direct to that Court under section 438 of the Criminal Procedure Code.

(2). Every such proposal must be forwarded by the officer making it to the Head of his Department, who, if he concurs in it, shall submit it with his own opinion to Government, through the Legal Remembrancer.

(3). The Legal Remembrancer, after calling for all information or papers that he may deem necessary to enable him to arrive at a correct opinion, shall forward the correspondence to Government, together with a report, stating his opinion ; and, if he advises an appeal or application to the High Court, the principal grounds on which he suggests its being based.

(4). If Government sanction the appeal or application, copies of the correspondence and of the Legal Remembrancer's report will be forwarded direct to the Government Pleader in the High Court from the Secretariat, with a copy of the Government Resolution empowering him to file the appeal or application.

(5). The appeal or application will then be drawn up by the Government Pleader and after consultation with the special counsel, if any, whom Government authorize him to retain for the purpose.

(6). Neither the grounds of appeal or application nor the arguments used in support of the same at the hearing need be limited to those stated in the Legal Remembrancer's opinion. The Government Pleader or other counsel will be at liberty to exercise his own discretion as to the manner in which the appeal should be conducted or the application supported, subject only to any special reservations which may be made in the Government Resolution sanctioning the appeal or application.

(7). As soon as Government have sanctioned the institution of an appeal or the filing of an application, it will be the duty of the Legal Remembrancer and of the local officer who proposed the same to forward to the Government Pleader direct without delay all the material papers in their possession relating to the case.

(8). As soon as the appeal or application has been disposed of, the Government Pleader will inform the Legal Remembrancer of the result. If a written judgment is recorded by the Court, he will obtain with as little delay as possible two copies of it, and forward one to the Legal Remembrancer and one, with the papers, to the officer who proposed the appeal or application.

(9).* The result of the appeal or application will be specially reported to Government by the Legal Remembrancer only in such cases as appear to him to be important. As a general rule it will suffice if the different cases and their results are mentioned in

* Government Memo. No. 1736, dated 29th March 1889, Judicial Department, directs that result of appeals in all cases in future should be reported to Government.

his annual report to Government. The officer who proposed the appeal or application need not communicate its result to Government.

32. It is also the duty of the Remembrancer of Legal Affairs to draw Bills And in drafting Bills. embodying such proposals for legislation as may be sent to him for the purpose from any of the Executive Departments of Government.

33. Bills so drawn will in the first instance be regarded merely as drafts intended to facilitate the further discussion of the proposed measure in the Executive Department of Government for which they have been prepared, or with such persons as that Department may think it desirable to consult.

34. If it should ultimately be determined to proceed to legislation, the draft Final revision of Bills. prepared by the Remembrancer of Legal Affairs will be returned to him; and it will be his duty to revise the draft, embodying in it all the provisions held to be necessary or desirable, and to finally mould the Bill in the shape in which it should be introduced into the Legislative Council, adding to it the usual Statement of Objects and Reasons. He will then cause the Bill to be printed under his supervision, and submit it to the department for which it has been prepared.

35. The Remembrancer of Legal Affairs is bound also to bring to the notice of Government from time to time all new enactments which require the issue by Government of rules, orders, bye-laws, or notifications, or which involve any change in any existing rules, orders, bye-laws, or notifications, and on receipt of the necessary instructions, to draft all such rules, orders, bye-laws, or notifications, as it may be necessary to issue, for the approval of Government. And all rules, orders, bye-laws, or notifications which it is at any time proposed to issue in the name of the Governor in Council in virtue of any power derived from any legislative enactment should be forwarded to the Remembrancer of Legal Affairs in order that he may revise the same before they are issued with a view to legal precision and correctness.

36. The Remembrancer of Legal Affairs is to submit an annual report for the calendar year to Government, detailing the general results of the civil litigation in the mofussil in which Government or Government Officers were concerned, and of the criminal prosecutions, if any, in which special measures may have been taken on behalf of Government to secure conviction, and bringing to the notice of Government all such other matters of interest in connection with their legal affairs as he may think necessary. To enable him to prepare this report the Remembrancer of Legal Affairs may call upon local officers of every department to furnish him with such information as he deems necessary.

Government Pleaders and Public Prosecutors.

"Government Pleader" defined. 37.* The term "Government Pleader" includes—

(1) the Government Pleader in the High Court;

(2) District Government Pleaders; and

(3) Subordinate Government Pleaders (of whom one will be nominated for every Subordinate Judge's Court or Small Cause Court not situated at the head-quarters of a District Government Pleader).

† The term "Public Prosecutor" means any person appointed by Government "Public Prosecutor" under section 492 of the Criminal Procedure Code to be Public Prosecutor for a district or a division of a district, or for a specified class of cases in a district or division of a district, and it also includes the Government Pleader in the High' Court for the purposes mentioned in Rule 47 of these Rules, and any person appointed by a District or Sub-divisional Magistrate for the purposes mentioned in Rule 50 of these Rules.

‡ 38. The salary of the Government Pleader in the High Court is Rs. 300 per Salaries. month. The salaries of the District Government Pleaders are as follows :—

* For rules regarding appointments of Honorary Assistant to Government Pleaders, *vide* High Court Rules published at page 899, *B. G. G.*, 1886.

The object in view is that the candidate who becomes an Honorary Assistant to Government Pleaders should gain aptitude and experience (G. R. No. 4926 of 16th September 1889, J. D.).

In the Sind Rules for Rule 37 the following is substituted :—

37. The term "Government Pleader" includes :—

(1) The Government Pleader in the Sadar Court ;

(2) The District Government Pleaders of Karáchi, Hyderabad and Shikárpur and the Upper Sind Frontier District, and the Assistant Government Pleader of Karáchi ;

(3) Subordinate Government Pleaders (of whom one will be nominated for every Subordinate Judge's Court or Small Cause Court not situated at the head-quarters of a District Government Pleader).

† In Sind Rules para. 2 of Rule 37 is omitted.

‡ In the Sind Rules for Rule 38 the following is substituted :—

38. The offices of Public Prosecutor for Sind, Government Pleader in the Sadar Court and District Government Pleader of Karáchi are held by one Salaries. officer ; and the offices of District Government Pleader for Shikárpur and District Government Pleader for the Upper Sind Frontier District are also held by one officer.

The District Government Pleaders of Hyderabad, Shikárpur and the Upper Sind Frontier District and the Assistant Government Pleader of Karáchi are Public Prosecutors for those districts respectively in the absence of the Public Prosecutor for Sind.

The salaries of the Government Pleaders and Public Prosecutors are as follows :—

Public Prosecutor for Sind, Government Pleader in the Sadar Court and District	} Rs. 400 per mensem.
Government Pleader of Karáchi.	

Government Pleader and Public Prosecutor, Hyderabad.	} Rs. 150 per mensem.
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Do, do. Shikárpur	} Rs. 150 per mensem.
and Upper Sind Frontier District.	

Ahmedabad	} Each Rs. 125 per month.
Surat	...	...
Thána and Kolába*	...	...
Poona	...	...
Kaira	} Each Rs. 35 per month.
Broach	...	...
Ratnágiri	...	...
Kánara	...	...

39. (1) Subject to the provisions hereinafter contained, "all Government Fees in civil cases. Pleaders are entitled to the usual fees allowed by the Courts according to law as cost in each civil cause in which they are engaged.

† (2) In cases in which a reference is made to the High Court under the Stamp Act, and in which the Government Pleader in the High Court is instructed to appear on behalf of Government, he shall be entitled to a fee of thirty rupees.

(3) In cases in which a reference is made to a Civil Court under section 15, Act X of 1870, the fees shall be calculated on the amount of compensation tendered by the Collector under section 11 of the Act, or, if no claimant attended pursuant to the notice mentioned in section 9, on the amount of compensation which the Collector, under section 18, shall have declared himself willing to give to the parties.

‡ (4) In enquiries under the Indian Treasure Trove Act, 1878, the Government Pleaders, when they appear on behalf of Government, are entitled to the usual fees calculated on the value of the share of the treasure to which Government may lay claim, subject to any increase that may be sanctioned by Government in particular cases.

||(4a) A Government Pleader employed by a Conservator of Forests in an appeal under section 16 of the Indian Forest Act, 1878, shall receive, for each case, a fee of Rs. 10, subject, by order of the

* There is a separate District Public Prosecutor for the Kolába District, who receives a salary of Rs. 120 per month. (G. R. No. 417 of 23rd January 1875, J. D.)

† In the Sind Rules para. 2 of Rule 39 is omitted.

‡ In the Sind Rules after the words "on behalf of Government" in para. 4 of Rule 39 the following is inserted : "in accordance with the rule of procedure made under section 19 of that Act and published at page 188 of the B. G. G. of 15th March 1882."

§ In Sind Rules substitute "lays" for "may lay".

|| The Sind Rules substitute the following as para. 4a of Rule 39 :—

"In civil cases in which no fee is allowed in the Court's bill of costs the Government Pleader's fee will from time to time be fixed by Government on the recommendation of the Remembrancer of Legal Affairs." (Notn. No. 436, B. G. G., 1883, Pt. I., p. 75.)

Remembrancer of Legal Affairs, to diminution to a sum not less than Rs. 5 and to increase to a sum of not more than Rs. 30.

(5) Whenever two or more officers of Government may be parties to the same suit, they shall, ordinarily, all be represented by the Government Pleader, who shall alone conduct the suit, and shall receive but one fee for it; but if special circumstances render it expedient to appoint more than one pleader for the conduct of any such case, and whenever it seems necessary to adopt pleadings involving several lines of defence, or separate answers differing in substance, a second Pleader may be appointed, with the approval of the Remembrancer of Legal Affairs, or a separate fee may be awarded to the Government Pleader by the Remembrancer of Legal Affairs for each separate defence.

(6) In cases of unusual importance, or difficulty, or in which marked industry or ability has been displayed, the Remembrancer of Legal Affairs is empowered to grant to a District Government Pleader a further special remuneration not exceeding Rs. 100 for each case. Special remuneration in excess of Rs. 100 may be granted only with the sanction of Government.

* 40. The Government Pleader in the High Court is also entitled to a fee of thirty rupees for every criminal case in which he actually appears: provided that any person appointed by Government to be Public Prosecutor for the purposes mentioned in Rules 47 and 48 of these Rules, during the unavoidable absence of the Government Pleader, or for any other special reason, shall be entitled to the same remuneration.

† 41. District Government Pleaders and Public Prosecutors are entitled to a fee of Rs. 10 per diem for every day that they are actually engaged in criminal business either in the Sessions Court or in any Magistrate's Court at head-quarters.

In cases of unusual importance or difficulty, or in which marked industry or ability has been displayed, the Remembrancer of Legal Affairs is empowered to increase this fee to an amount not exceeding Rs. 25 per diem. A higher fee than Rs. 25 per diem may be granted only with the sanction of Government.

* In Sind Rules No. 40 runs as follows :—

40. The Public Prosecutor for Sind is entitled to a fee of thirty rupees for every criminal case in which he appears in the Sadar Court sitting at Karáchi. (Notn. 436, B. G. G., 1883, p. 76.)

If any such case in which the Public Prosecutor appears is held on the same day that he becomes entitled to a fee under Rule 41, the fee for such case shall be payable in addition to the fee under Rule 41. (No. 796, B. G. G., 1884, Pt. I., p. 73.)

† 41. In Rule 41 for the first seven words the Sind Rules substitute the following : "Every Public Prosecutor is" and the word "he" for "they"; the word "either" is omitted.

* 42. If the Government Pleader in the High Court is required under Rule No. 52 to appear in any case in the mofussil, he is entitled to a fee of Rs. 150 per diem for every day that he is necessarily absent from Bombay. This fee is inclusive of travelling and all other expenses.

Fees to Government Pleaders in the High Court when employed in the mofussil.

sarily absent from Bombay. This fee is inclusive of travelling and all other expenses.

+ 43. If a District Government Pleader or Public Prosecutor is required under Rule 53 to proceed to Bombay he is entitled to a fee of Rs. 25 for every day that he is necessarily absent from his

station, and to his actual travelling expenses to and from Bombay, and to his actual expenses for hire of conveyances whilst in Bombay ; and if he is required to appear in any case in any Court situated else-

* In Sind Rules No. 42 runs as follows :—

42. If the Government Pleader of the Sadar Court or the Public Prosecutor for Sind is required to appear in any case, civil or criminal, out of the Karáchi District, or before the Sadar Court in any case out of Karáchi, he is entitled to a fee of Rs. 60

per diem for every day that he is necessarily absent from Karáchi ; and if the Public Prosecutor for Sind is required to appear

in any case in the Sessions Court or before a Magistrate in any place in the Karáchi District other than Karáchi, or if the District Government Pleader of Karáchi is required to appear in any civil case in any such place, he is

entitled to a fee of Rs. 30 per diem for every day that he is necessarily absent from Karáchi.

The above fees are inclusive of travelling and all other expenses and in lieu of any fee to which the officer in question might otherwise be entitled. (Notn. No. 436, B. G. G., 1883, Pt. I., p. 76.)

A day shall for the purposes of this rule mean any fraction of the period from midnight to midnight exceeding six hours, and a fee may be payable for any day under this rule in addition to fees under Rule 40 or Rule 41. (No. 796, B. G. G., 1884, Pt. I., p. 73.)

+ For Rule 43, the Sind Rules, substitute the following :—

43. If the District Government Pleader and Public Prosecutor of Hyderabad or Shikárpur and the Upper Sind Frontier District is required under Rule 53 to proceed to Karáchi, he is entitled to a fee of Rs. 25 per diem for every day that he is necessarily absent from his station and to his actual travelling expenses to and from Karáchi, and to his actual expenses for hire of conveyances whilst in Karáchi or elsewhere beyond his own district. (No. 7476, B. G. G., 1885, Part I., p. 1262.)

And if either of the said Pleaders or the Assistant Government Pleader of Karáchi is required to leave Hyderabad, Shikárpur, or Karáchi, respectively, or (No. 2976, B. G. G., 1887, Pt. I., p. 452) if the Assistant Public Prosecutor of Shikárpur and the Upper Sind Frontier District who resides at Sukkur is required to leave Sukkur to conduct a case, whether civil or criminal, at any place in his District, he shall be entitled to a district allowance of Rs. 3 per diem for every day that he is necessarily absent from his station, and to a travelling allowance at the rate of 4 annas per mile travelled otherwise than by railway or steamer and at $1\frac{1}{2}$ annas per mile by railway or steamer.

The allowances mentioned in the last paragraph shall be in addition to the fees to which the said Pleaders may be otherwise entitled, unless in any case a higher fee than Rs. 10 per diem is drawn, when such higher fee shall be deemed to include the district allowance. (Notn. No. 436, B. G. G., 1883, Pt. I., p. 76.)

where than at his head-quarters, he is entitled to a fee to be fixed by the Remembrancer of Legal Affairs according to the circumstances of each case, but not exceeding Rs. 50 per diem, for each day that he is necessarily absent from his head-quarters. This fee is inclusive of travelling and all other expenses.

44. A District Government Pleader or Public

Travelling allowance
of District Government
Pleaders, &c., in certain
cases.

Prosecutor leaving the head-quarters of his district or division on duty, for which duty he receives no fee in addition to his pay, is entitled to travelling allowance either at Rs. 3 a day for the period of his absence from head-quarters, or at 4 annas per mile travelled otherwise than by railway, and at $1\frac{1}{2}$ annas per mile by railway.*

(No. 6254, B.
G. G., 1886,
p. 949.)

Alibág, Broach, Kaira, Bijápur and Godhra shall for the purposes of this and of the last preceding rule, be deemed to be the head-quarters of the districts of Kolába, Broach, Kaira, Bijápur and the Panch Maháls respectively: provided that no travelling allowance shall be admissible under this rule for journeys on duty between any of the above places and Thána, Surat, Ahmedabad, Sholápur and Kaira respectively, and that nothing in the latter part of Rule 43 applies to appearances in any Court situated in the five last-mentioned places.

†45. It is the duty of Government Pleaders to

Ordinary duties of
Government Pleaders.

appear on behalf of Government, or of any Government Officer, in any suit or other civil proceeding to which Government are a party, or the institution or defence of which is undertaken by Government, or in any suit or other civil matter, in which Government requires their services, whoever the nominal party on whose behalf they are called on to appear may be, if Government determine that the case is one in which they have such an interest as to render it advisable that it should be conducted on their behalf; and also to appear, when so directed by the District Judge, in support of an order by a Subordinate Judge imposing a fine on a Pleader under Regulation II of 1827 or on a witness under the provisions of the Code of Civil Procedure,

(No. 5949, B.
G. G., 1892,
p. 1071.)

* In Sind Rules the words "or steamer" are added after the word "railway" in Rule 44. (Notn. No. 436, B. G. G., 1883, Pt. I, p. 76.)

† In Sind Rules the following addition has been made to No. 45 after the word "order" in line 20:—

The Government Pleader in the Sadar Court shall also appear in the Sadar Court—

(a) When so directed by the Judicial Commissioner of the province of Sind or instructed by a Judge of a District in that province to support an order imposing a fine,

(i) on a pleader under Regulation II of 1827, or

(ii) on a witness under the Code of Civil Procedure, or

(b) When so directed by the Commissioner in Sind or by the Judicial Commissioner of the province of Sind or instructed by a Judge of a District in that province to support allegations of misbehaviour against a pleader in proceedings held for the purpose of determining whether such pleader should be removed or suspended from practice under Section 16 of Bom. Act XII of 1866. (Notn. No. 1950, B. G. G., 1893, p. 312.)

and appealed against to the District Court, when, for any sufficient cause, the District Judge is of opinion that a Pleader should be heard in support of the order.

* 46. Whenever special counsel is employed by the Remembrancer of Legal Affairs, under Rule 25, in instructing of special counsel for Mofussil cases. Retaining and instructing of special counsel for Mofussil

Bombay for any case to be heard either in Bombay or in the Mofussil, the Government Pleader in the High Court shall take (under instructions from the Remembrancer of Legal Affairs) the usual steps for retaining such counsel. The counsel's brief will be prepared, for any case to be tried in Bombay, by the Government Pleader in the High Court, and for any case to be tried in the Mofussil, by the Government Pleader of the district, or by the Public Prosecutor of the district or division in which the case is to be tried; and, in the latter case, the brief when prepared will be forwarded by the District Government Pleader, or the Public Prosecutor to the Government Pleader, in the High Court for submittal to the counsel.

†47. The Government Pleader in the High Court is appointed Public Prosecutor (Notn. 4161, B.G.G., 1883, Pt. I., p. 446.) Duties of the Government Pleader in the High Court in criminal cases.

for the purpose of presenting appeals to the High Court in cases of acquittal on behalf of Government under section 417 of the Criminal Procedure Code, and for the purpose of appearing for the prosecution in criminal appeals heard before the High Court under section 423 of the said Code, and for the Crown in other criminal cases which come before the High Court on its Appellate Side under the provisions of the Criminal Procedure Code.

†48. The Government Pleader in the High Court, as Public Prosecutor on the Appellate Side of that Court, must appear for the prosecution, if called upon, in any criminal case from the Mofussil which comes before that Court on that side. (Notn. 1578, B.G.G., 1883, Pt. I., p. 213.)

* In Sind Rules No. 46 runs as follows :—

46. Whenever special counsel is employed by the Remembrancer of Legal Affairs under Rule 25 for any civil or criminal case to be heard in Sind, the counsel's brief will be prepared by the Government Pleader of the district in which the case is to be heard. (Notn. No. 436, B.G.G., 1883, Pt. I., p. 76.)

† In Sind Rules No. 47 is as follows :—

47. The Public Prosecutor for Sind is liable to appear for the Crown in the Sadar Court:

- (a) under section 417 of the Criminal Procedure Code for prosecuting such appeals as Government from time to time directs against acquittals;
- (b) under section 422 of the Criminal Procedure Code for the prosecution in appeals against convictions heard before that Court;
- (c) in any other criminal cases which come before that Court under the Criminal Procedure Code.

He is appointed by Government under section 22 of the Criminal Procedure Code to receive notices of criminal appeals to be heard before the Sadar Court. (Notn. No. 436, B.G.G., 1883, p. 76.)

† Rule 48 of the Sind Rules is as follows :—

48. (1) The Public Prosecutor for Sind will ordinarily appear in the Sadar Court :

He will ordinarily so appear :—

- (a) in every case submitted to the High Court under section 374 of the Criminal Procedure Code for confirmation ; and
- (b) in every appeal against an acquittal ; and
- (c) in every case submitted to the High Court under section 307 of the Criminal Procedure Code and in every appeal against a conviction heard by it under section 423 of the said Code, if in such case or appeal the accused person (or when there are several accused persons, any one of them) is represented by counsel, whether a barrister or a pleader ;
- (d) in any criminal case in which he may be specially instructed to appear by the Sessions Judge or Magistrate of a district, or by the Remembrancer of Legal Affairs ; and
- (e) in any criminal case in which the High Court or a Division Court desires him to appear or intimates its opinion that he ought to appear.

*49. Notices of commitments under section 218 of the Criminal Procedure Code will be given to the District Public Prosecutors who will ordinarily conduct the prosecution in every trial before Courts of Sessions in

- (a) in every case submitted to that Court under section 374 of the Criminal Procedure Code for confirmation ; and
- (b) in every appeal against an acquittal ; and
- (c) in every appeal against a conviction heard by the Sadar Court under section 423 of the said Code, if the accused (or where there are several accused persons, any one of the accused persons) is represented by counsel, whether a barrister or pleader ; and
- (d) in every criminal case which the Sadar Court transfers from any Subordinate Court for trial before itself ; and
- (e) in any criminal case in which he may be specially instructed to appear by the Magistrate of a district or by the Commissioner in Sind, or by Government ; and
- (f) in any criminal case in which the Sadar Court desires him to appear or intimates its opinion that he ought to appear.

(2) He will conduct, in person or through his Assistant, all the duties of Public Prosecutor for the Karachi District, and when so directed by Government or by the Commissioner in Sind, or in special circumstances when there is not time to communicate with the Commissioner in Sind, by the District Magistrate, will appear on behalf of the Crown in any criminal case in any other part of the province.

When the District Magistrate gives such sanction he shall submit a full report of the circumstances making this necessary to the Commissioner in Sind. (Notn. No. 4227, B. G. G., 1888, Pt. I., p. 658.)

*Rule 49 of the Sind Rules corresponds with No. 49 of these rules with the following modifications :—

After the word "commitments" insert "and appeals" and after the figure "218" insert "and 422."

Omit the word "District" before the words "Public Prosecutor."

For the words "appear for the prosecution" substitute "shall appear."

In the penultimate sentence for the words "by the Remembrancer of Legal Affairs" read "by the Commissioner in Sind or by Government." (Notn. No. 436, B. G. G., 1883, Pt. I., p. 79.)

(No. 5029, B.
G. G. 1886,
p. 737.)

(No. 4161,
B. G. G., 1883,
Pt. I., p. 446;
No. 5804, B.
G. G., 1883,
Pt. I., p. 631;
and No. 1572,
B. G. G., 1890,
Pt. I., p. 254.)

accordance with section 270 of the Criminal Procedure Code, and appear for the prosecution at the hearing of any appeal before those Courts when counsel, whether a barrister or pleader, appears for the appellant, or when they are specially instructed by the District Magistrate so to appear. When so required by the Sessions Judge, the Magistrate of the district, or by the Remembrancer of Legal Affairs, it is their duty also to conduct the prosecution in any trial before a Magistrate. Whenever the previous connection of the District Public Prosecutor with any case has been such as to embarrass him in the discharge of his functions as Public Prosecutor, a reference shall be made to Government by the Magistrate of the District with a view to the appointment of a special Public Prosecutor for such case.

* 49A. A District Public Prosecutor may not act (Notn. 2115 A., B. G. G.,
When District Public on behalf of an accused person 1887, Pt. I.,
Prosecutors and their within his district without the p. 295.)
Assistants may act on previous permission of the Ma-
behalf of accused per- gistrate of the District, or of
sons, the Legal Remembrancer.

An Assistant Public Prosecutor, after consulting the District Public Prosecutor to whom he is an Assistant, may act on behalf of an accused person within his district, subject to the following conditions, *viz.* :

(1) That he shall not do so in any case in which it shall appear to the District Public Prosecutor that his services will very probably be required for the prosecution.

(2) That if his services are required for the prosecution in any case in which he has already appeared or been engaged for the defence, he shall

* No. 49A of the Sind Rules is as follows :—

When Public Prosecutors and their Assistants may act on behalf of accused persons.

“ 49A. The Public Prosecutor for Sind may not act on behalf of an accused person in Sind without the previous permission of the Commissioner in Sind.

“ The District Public Prosecutors of Hyderabad and of Shikarpur and the Upper Sind Frontier District may not act on behalf of an accused person within their respective districts without the previous permission of the Magistrate of the district or of the Commissioner in Sind.

“ The Assistant Government Pleader of Karachi and any Pleader appointed to be an Assistant Public Prosecutor, after consulting the Public Prosecutor for Sind, in the case of the Assistant Government Pleader of Karachi and the District Public Prosecutor to whom he is an Assistant in any other case, may act, on behalf of an accused person within his district, subject to the following conditions, *viz.* :

“ (1) That he shall not do so in any case in which it shall appear to the Public Prosecutor for Sind or to the District Public Prosecutor, as the case may be, that his services will very probably be required for the prosecution.

“ (2) That if his services are required for the prosecution in any case in which he has already appeared or been engaged for the defence, he shall provide a substitute to the satisfaction of the Magistrate of the district, who will be willing to conduct the prosecution on the same terms as to remuneration which apply to himself.” (Notn. No. 2115, B. G. G., 1887, Pt. I., p. 294).

provide a substitute to the satisfaction of the Magistrate of the district, who will be willing to conduct the prosecution on the same terms as to remuneration which apply to himself.

* 50. When, under section 492 of the Criminal

Appointment and remuneration of special prosecutors under section 492 of the Criminal Procedure Code. Procedure Code, a Magistrate of the district or subject to his control a Sub-divisional Magistrate appoints any person in the absence of the Public Prosecutor or when no Public

Prosecutor has been appointed to be Public Prosecutor for the purpose of conducting the prosecution in any trial before the Court of Sessions, such person shall be entitled to the same remuneration as would be payable under Rule 41 of these rules.

But no such person shall be appointed by a Magistrate of the district without the concurrence of the Remembrancer of Legal Affairs, and if, for special reasons, a higher rate of remuneration than the above is deemed necessary for the person whom it is proposed to appoint, the sanction of Government must be obtained, through the Remembrancer of Legal Affairs, before any liability is incurred.

† 51. When the Public Prosecutor for the Presidency or special counsel appears

Duty of Government Pleader and Prosecuting Pleader when the Public Prosecutor or special counsel appears. for the prosecution in any case before the High Court, or any Sessions Court, the Government Pleader or Prosecuting

Pleader will appear also and assist, or instruct the Public Prosecutor or special counsel, as may be necessary.

‡ 52. The duties of the Government Pleader in the High Court are ordinarily

Government Pleaders in the High Court may be required to appear in the Mofussil. restricted to that Court, but it is his duty, also, whenever his services can be spared without inconvenience to that Court, and the Remembrancer of Legal Affairs so requires, to appear in any case, whether civil or criminal, in any Court in the Mofussil.

* In Sind Rules No. 50 runs as follows :—

50. When under section 492 of the Criminal Procedure Code, a district Magistrate or Sub-divisional Magistrate appoints any person to be Public Prosecutor in any particular case, such person shall be entitled to the same remuneration as would be payable under these rules to the Public Prosecutor of the district if he conducted the prosecution.* (Notn. No. 436, *B. G. G.*, 1883, Pt. I., p. 77.)

† No. 51 of the Sind Rules is as follows :—

51. When special counsel appears for the prosecution in any case before the Sadar Court or any Sessions or Magistrate's Court, the Government Pleader of such Court will appear also, and assist or instruct the special counsel as may be necessary, and when the Public Prosecutor for Sind appears for the prosecution in any case before a Sessions Court or a Magistrate's Court in the districts of Hyderabad, Shikápur, or the Upper Sind Frontier district, the Government Pleader of that district will appear also and assist or instruct him as may be necessary. (Notn. No. 436, *B. G. G.*, 1883, Pt. I., p. 77.)

‡ In Sind Rules for Nos. 52 and 53 the following rules are substituted :—

52. The duties of the Government Pleader in the Sadar Court, as such, are ordinarily limited to that Court, but it is his

† 53. Similarly

District Government Pleaders and Public Prosecutors may be required to proceed to Bombay, or to appear in other Courts than those at the head-quarters.

District Government Pleaders' duties are ordinarily restricted to the Courts at the head-quarters of the district for which they are appointed, and Public Prosecutors' duties are ordinarily restricted to the Sessions Courts to which they are respectively appointed; but when so

required by the Collector or Magistrate of the district, or by the Remembrancer of Legal Affairs, they will appear in any case in any Court in the said district, or proceed to Bombay to instruct Counsel, or to assist at the hearing or trial of any case in the High Court, or for any other such purpose: provided that in the case of Public Prosecutors such requisitions shall be confined to criminal cases.

54. The duties of Subordinate Government

Duties of Subordinate Government Pleaders.

Pleaders are limited to appearing on behalf of Government in the Courts for which they

are respectively appointed in any suit or other civil matter in which the District Government Pleader would appear if such suit or matter arose in any Court at the head-quarters of the district. They are to be subordinate to the respective District Government Pleaders, and whenever a District Government Pleader appears in any Court in which there is a Subordinate Government Pleader, the latter will appear with him as junior pleader.

*55. It is the duty of the Government Pleader in

Duties of Government Pleader in the High Court as adviser of Government Officers.

the High Court to advise District Officers only in respect of any proceedings, whether civil or criminal, which he has or

may have to conduct on behalf of Government, but his duties as hereinbefore described extend to Government business in all its departments, whether under the Supreme or Local Government.

56. It is the duty of the District Government

District Government Pleaders' duties as advisers of Government Officers.

Pleaders to advise all local officers not only in respect of any proceedings, whether civil or criminal, which they may

have to conduct on behalf of Government or of any

duty, also, whenever his services can be spared without inconvenience to that Court and without detriment to the discharge of his duties as Public Prosecutor for Sind, to appear, if required by Government or by the Commissioner in Sind, in any Civil Court in the Province. Whenever the Government Pleader in the Sadar Court so appears in any Civil Court in which there is a District or Subordinate Government Pleader, the latter will appear with him as Junior Pleader.

53. Similarly, the duties of the District Government Pleaders and Public Prosecutors of Hyderabad, Shikápur, and the Upper Sind Frontier District are ordinarily restricted to the District and Sessions Courts for which they are respectively appointed; but when so required by the Collector or Magistrate of the District or by Government or the Commissioner in Sind they will appear in any case in any Court in their respective districts, or proceed to Karáchi or elsewhere beyond their own district, to instruct Counsel, or to assist at the hearing or trial of any case in the Sadar Court, or for any other such purposes. (Notns. No. 436, B. G. G., 1883, p. 77, and No. 7476, B. G. G., 1885, Pt. I., p. 1262.)

* In Sind Rules in No. 55 the words "Sadar Court" are substituted for "High Court."

such officer, but also, to the best of their ability, on all legal matters which any such officer may refer to them concerning any Government business of any kind or in any department, whether such department be under the Supreme or Local Government.

RULES FOR THE INSTITUTION AND DEFENCE OF SUITS.

The following rules for the guidance of all Officers in connection with the Institution and Defence of Suits and other Civil Proceedings in the Mofussil, in which Government, or any Officer of Government is a party, or in which Government have any interest, are issued in supersession of all existing Rules or Orders on the same subject. These rules do not apply to the Province of Sind :—

I.—Institution of Suits on behalf of Government.

*Notn. No.
6452 C., B.
G. G., 1878,
Pt. I., pp.
751 to 765.

X Any officer wishing to institute a suit shall submit Report to be submitted a clear and detailed report, before a suit is through the ordinary channel instituted. of communication, to the Head of his department, showing—

- (a) the circumstances which render the suit necessary ;
- (b) the exact nature of the claim for which it is to be brought ;
- (c) the steps, if any, which have been taken to obtain satisfaction of the claim without bringing a suit ;
- (d) what objection or excuse, if any, the defendant has urged against the claim ;
- (e) the evidence, both oral and documentary, which it is proposed to adduce in support of the claim ; and
- (f) the evidence which, so far as is known, the defendant will be able to adduce in his defence.

All documents relied upon, and all the correspondence and written proceedings, whether in English or in the vernacular, connected with the proposed suit, should accompany the report.

2. It should be stated in the report whether or Solvency of defendant not the circumstances of the to be inquired into. person against whom it is proposed to institute the suit are such as to render it likely that execution will be obtained of any decree that may be given against him.

The probability of the recovery of a sum at least equal to the costs should be ascertained before recommending the institution of any suit, unless, for reasons which should be explained, it is considered that the suit should be brought, notwithstanding that the recovery of costs is doubtful.

3. The head of the department, if he thinks Report to be referred by head of department to the Legal Remembrancer. that all the necessary preliminary steps have been taken, and that there is *prima facie* sufficient cause for the institution of a suit on behalf of Government, shall refer

* The Sind Rules are, with the verbal modifications, noted in the foot-notes identical with those for the rest of the Presidency and were published by Notn. No. 6849, B. G. G., 1882, Pt. I., pp. 951 to 961.